

Item No. 1
06.07.2023
Court. No. 19
GB

C.O. 837 of 2020

Elahi Sk. & Anr.
Vs.
Sofi Md. & Ors.

Mr. Partha Pratim Roy

...for the Petitioners.

Affidavit-of-service filed in Court today, be kept with the record.

Despite service, none appears on behalf of the opposite parties. Yesterday also, none appeared on behalf of the opposite parties when the matter was called on. The learned advocate for the opposite parties has also been served. Thus, the revisional application is taken up in the absence of the opposite parties.

The revisional application is filed against an order dated April 10, 2019 by which the learned Civil Judge (Junior Division), Lalbagh refused to extend the time to deposit the consideration amount on the basis of the prayer made by the plaintiffs. The suit for specific performance of contract was decreed in favour of the plaintiffs. The defendants were directed to execute and register the deed of sale in respect of the suit property in favour of the plaintiffs within 45 days from the date of the judgment and to hand over possession of the suit property, if not delivered earlier, failing which, the plaintiffs would be at liberty to put the decree into execution subject to deposit of remaining consideration amount of Rs.15,454/- within 30 days from the date of the judgment.

It appears that at the time of putting the decree into execution, the decree-holders prayed for execution upon deposit of the remaining sum of Rs.15,454/-. A prayer for condonation of the delay in depositing the money was made. It was explained that the delay was unintentional and not on account of any laches on the part of the decree-holders. Prayer for enlargement of the time to deposit the amount was made. The Court did not find any plausible reason as to why such delay occurred and held that after the judgment had been passed, the court had become functus officio. As such, the judgment could not be varied. It was not a clerical mistake which was sought to be corrected by the decree-holders, but the prayer if allowed would be in the nature of rectification of the judgment.

Mr. Roy, learned advocate appearing on behalf of the decree-holders submits that as per Section 28 of the Specific Relief Act, 1963, the Court may allow the purchaser to pay the purchase money later. Reference has been made to the decision of ***Yeshoda and Ors. versus K. Nagarajan*** passed in ***SLP (C) No.18603 of 1996***. The Hon'ble Apex Court found extension of three months time for depositing of purchase money by a learned court was justifiable. Section 148 of the Code of Civil Procedure empowered the civil court to enlarge the time for complying orders.

Further reliance has been placed on the decision of ***Prime Promoters Pvt. Ltd. versus Aroop Kumar Chatterjee and Ors.*** passed in ***C.O. No.985 of 1994*** by which a coordinate Bench had held that Section 28(1) of the

Specific Relief Act, 1963 empowered the court to extend time for making deposit under decree without making any distinction with regard to the nature of the decree.

Thus, the findings of the learned court below that once the decree has been passed the court had become functio officio and could not extend the time for deposit of the remaining consideration money in compliance with the decree, is not correct.

With regard to the ground for delay, this Court finds that the explanation given is reasonable. As per the judgment dated February 17, 2018, the plaintiffs were granted liberty to execute the decree provided Rs.15,454/- being the remaining consideration money was deposited within 30 days from the date of the judgment. The application for extension of time to deposit the money was filed on February 18, 2019, that is, after 11 months from the date prescribed by the Court. The ground for such delay has been explained in the application.

The explanation given is inadvertence and lack of knowledge of the petitioners. In any event, the petitioners cannot be deprived of their right to execute the decree only on the ground of such delay in depositing of the consideration money, when admittedly the judgment debtors have not complied with their obligation as per the judgment.

The plaintiffs could not understand the true meaning of the judgment, which was confusing. The plaintiffs understood the judgment as if the court had directed the defendants to execute the deed and in failure of such execution the plaintiffs were required to deposit the

consideration money and pray for execution. In any event, once the plaintiffs/decreed-holders have been favoured with the decree of specific performance of contract on contest, delay in depositing the money cannot be a reason to deprive the decree-holders from enjoying the result of such decree. As they are willing to deposit the amount, the order impugned is set aside. The Title Execution Case No.07 of 2018 shall revive upon payment of cost of Rs.5,000/- to the judgment debtors within seven days from communication of this order. The decree-holders shall deposit the amount of Rs. 15,454/- before the learned executing court within ten days from the date of communication of this order. Thereafter, the execution case shall proceed.

Accordingly, the revisional application is disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)